

DOCKET NO. ENFO01-00004
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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : Lisa A. Fillebrown et al.
U.S. Patent No. : 8,386,557
Issue Date : February 26, 2013
Application No. : 09/775,042
Filed : February 1, 2001
For : METHOD FOR SUPPORTING A PERSONAL
WIRELESS NETWORK
Art Unit : 2451
Examiner : Maung, Zarni
Confirmation No. : 8351

MAIL STOP PATENT EXT.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
DETERMINATION UNDER 37 C.F.R. § 1.705(d)

The Patentee respectfully requests that the Office reconsider the patent term adjustment determination for the above-identified issued patent. In support of this petition, the Patentee states the following:

1. In the patent issued February 26, 2013, the patent term adjustment was determined to be 2,406 days.

2. The Patentee believes the correct patent term adjustment should be 3,661 days.
3. This patent application was filed on February 1, 2001.
4. The first Office Action was issued on June 25, 2004, which is 816 days after fourteen months from the filing date (+816 days).
5. The Patentee filed a reply on December 20, 2004 in response to the Office Action dated September 13, 2004, resulting in a deduction of 7 days (-7 days).
6. The Patentee filed an Information Disclosure Statement on January 28, 2005 after filing the reply on December 20, 2004, resulting in a deduction of 39 days (-39 days).
7. The Office issued an Office Action on May 9, 2005 in response to the Patentee's filing on December 20, 2004, resulting in an extension of 19 days (+19 days).
8. The Patentee filed a first Request for Continued Examination (RCE) on September 12, 2005 in response to the Office Action dated May 9, 2005, resulting in a deduction of 34 days (-34 days).
9. The Patentee filed a reply on February 2, 2006 in response to the Office Action dated September 29, 2005, resulting in a deduction of 35 days (-35 days).
10. The Patentee filed a second RCE on September 14, 2006 in response to the Office Action dated April 10, 2006, resulting in a deduction of 66 days (-66 days).
11. The Patentee filed a reply on April 9, 2007 in response to the Office Action dated December 5, 2006, resulting in a deduction of 35 days (-35 days).
12. The Patentee filed an Information Disclosure Statement on May 7, 2007 after filing the reply on April 9, 2007, resulting in a deduction of 28 days (-28 days).

13. The Office issued an Office Action on October 3, 2007 in response to the Patentee's filing on April 9, 2007, resulting in an extension of 55 days (+55 days).

14. The Patentee filed a reply on February 7, 2008 in response to the Office Action dated October 3, 2007, resulting in a deduction of 35 days (-35 days).

15. The Patentee filed a Notice of Appeal on August 7, 2008 in response to the Office Action dated April 4, 2008, resulting in a deduction of 34 days (-34 days).

16. The application was on appeal from August 7, 2008 until a Decision on Appeal dated June 21, 2012 partially reversed the Examiner. The Patentee therefore received an extension of 1,415 days (+1,415 days).

17. The Patentee filed an amendment on December 19, 2012 after a Notice of Allowance, and the amendment was entered on December 28, 2012, resulting in a deduction of 10 days (-10 days).

18. Three years from the filing date is February 1, 2004. The Office calculated an additional extension of 588 days for the period from February 1, 2004 to September 11, 2005 (the day before the first RCE was filed). This period overlapped with the extension of Section 4 by 145 days and with the 19-day extension of Section 7.

19. The first RCE was filed more than three years after the filing date of this application. Pursuant to the reasoning of *Exelixis, Inc. v. Kappos*, Case No. 1:12cv96, 2012 U.S. Dist. LEXIS 157762 (E.D. Va. November 1, 2012), the filing of the first RCE after three years does not stop the extension obtainable under 35 U.S.C. § 154(b)(1)(B).

20. As a result, the entire period from February 1, 2004 to the issue date of February

26, 2013 should be provided to the Patentee as an extension of 3,313 days.

21. The 3,313-day extension of Section 20 overlaps with the extension of Section 4 by 145 days, with the 19-day extension of Section 7, with the 55-day extension of Section 13, and with the 1,415-day extension of Section 16. The extension obtainable under 35 U.S.C. § 154(b)(1)(B) is therefore 1,679 days (+1,679 days).

22. The Patentee therefore believes the correct patent term adjustment should be calculated as 3,661 days (816 days – 7 days – 39 days + 19 days – 34 days – 35 days – 66 days – 35 days – 28 days + 55 days – 35 days – 34 days + 1,415 days – 10 days + 1,679 days)

23. In the event the Patentee's calculation is incorrect and the Patentee is entitled to a patent term adjustment greater than 3,661 days, the Patentee respectfully requests the Office to determine and issue the proper patent term adjustment entitled to the Patentee.

Therefore, the Patentee respectfully requests that the Office reconsider the determination of patent term adjustment and find that the Patentee is entitled to a patent term adjustment in the amount of 3,661 days.

If any issues arise, the Patentee respectfully invites the Office to contact the undersigned at the telephone number indicated below or at rmccutcheon@munckwilson.com.

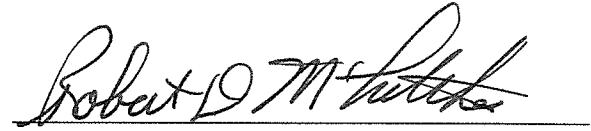
The Patentee has included the appropriate fee for this petition. The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

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Respectfully submitted,

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Date: 4/26/2013


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